

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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JEFFREY JEFFERS,

Plaintiff, **AMENDED**
COMPLAINT

-against-

11-CV-0339 (RRM)(CLP)

THE CITY OF NEW YORK, POLICE OFFICER
ANDREW BABAJKO, LT. MAUVIN BUTE, SGT.
BRUNO PIERRE, SGT. ANDREW TOLSON and PO
IVAN FURDA

Defendants.

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PRELIMINARY STATEMENT

1. This is a civil rights action, alleging that the City of New York and several New York City Police Officers violated plaintiff's rights under 42 U.S.C. § 1983, the Fourth and Sixth Amendments to the United States Constitution. Specifically, plaintiff alleges that, on July 10, 2010, defendants used excessive force on him. Plaintiff seeks compensatory and punitive damages, attorney's fees and costs, and such other and further relief as the court deems just and proper.

JURISDICTION & VENUE

2. This action is brought pursuant to 42 U.S.C. § 1983 and the Fourth and Sixth Amendments to the United States Constitution. Jurisdiction is conferred upon this Court by 28 U.S.C. §§ 1331 and 1343.

3. Venue is proper here pursuant to 28 U.S.C. § 1391.

PARTIES

4. Plaintiff is a resident of the State of New York.

5. The City of New York is a municipal corporation organized under the laws of the State of New York.

6. Andrew Babajko, Mauvin Bute, Bruno Pierre, Andrew Tolson and Ivan Furda (the “officers”) are New York City Police Officers who were acting under color of state law and in their capacities as City law enforcement officers at all relevant times. The officers are liable for directly participating in the unlawful acts described herein and for failing to intervene to protect plaintiff from unconstitutional conduct. These defendants are sued in their individual capacities.

STATEMENT OF FACTS

7. On July 10, 2010, at or about 10:25 p.m., plaintiff went inside a grocery store located at 217 E. 98th Street, Brooklyn, New York.

8. The employee in the store accused plaintiff of shoplifting and locked plaintiff in the store.

9. Police officers arrived and immediately Mace plaintiff.

10. Plaintiff was blinded by the Mace.

11. One of the officers then punched plaintiff in the face.

12. Another officer stomped on plaintiff’s arm and knocked out two of plaintiff’s teeth.

13. Plaintiff was then picked up and informed the officers that they were “braking my arm.”

14. The officers told plaintiff to “shut the fuck up.”

15. Plaintiff was taken to the 67th Precinct where Emergency Medical Services (“EMS”) personnel were waiting for him.

16. The officers refused to allow the EMS personnel to see plaintiff.

17. Plaintiff spent an hour in a cell and then the officers took him in a police car to Kings County Hospital.

18. X-rays taken of plaintiff showed that he had a fractured right arm.

19. Plaintiff’s arm was put in a cast up to his elbow and a sling was put on his arm.

20. Plaintiff suffered damage as a result of defendants’ actions. Plaintiff suffered pain, emotional distress, mental anguish, fear and anxiety.

**FIRST CLAIM
(UNREASONABLE FORCE)**

21. Plaintiff repeats the foregoing allegation.

22. In the course of arresting plaintiff, plaintiff was Maced, punched in the face knocking out two of his teeth and had his arm stomped on fracturing his arm.

23. This use of force was objectively unreasonable.

24. Accordingly, defendants violated the Fourth Amendment because they used unreasonable force on plaintiff.

**SECOND CLAIM
(MONELL CLAIM)**

25. Plaintiff repeats the foregoing allegations.

26. The City of New York, through a policy, practice and custom, directly caused the constitutional violations suffered by plaintiff.

27. Upon information and belief, the City of New York, at all relevant times, was aware that the defendants are unfit officers who have previously committed the acts alleged herein and/or have a propensity for unconstitutional conduct.

WHEREFORE, plaintiff demands a jury trial and the following relief jointly and severally against the defendants:

- i. Compensatory damages in an amount to be determined by a jury;
- ii. Punitive damages in an amount to be determined by a jury;
- iii. Costs, interest and attorney's fees;
- iv. Such other and further relief as the Court may deem just and proper.

DATED: June 13, 2011
New York, New York

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